

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANK J. MEROLA, in his official capacity as
Clerk of the County of Rensselaer, New York, and

Plaintiff,

-against-

ANDREW M. CUOMO, in his official capacity as
Governor of the State of New York,
LETITIA A. JAMES, in her official capacity as
Attorney General of the State of New York, and
MARK J.F. SCHROEDER, in his official capacity as
Commissioner of the New York State Department of
Motor Vehicles,

Defendants.

**PLAINTIFF'S
NOTICE OF APPEAL**

Civil Action No. 1:19-cv-0899
(GLS/TWD)

PLEASE TAKE NOTICE, that, Plaintiff Frank J. Merola, in his official capacity as Clerk of the County of Rensselaer, New York in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the final judgment (ECF 37) (“Judgment”) and decision and order (ECF 36) (“Order”), which were entered in this action on the 13th day of December, 2019, and which granted Defendants’ cross-motion to dismiss the Complaint and denied Plaintiff’s motion for a preliminary injunction.

This Notice of Appeal is being filed in an abundance of caution because Plaintiff understands that his pending Motion for Reconsideration (ECF 38), filed on December 16, 2019, is treated as a Rule 59(e) motion, which tolls the time within which he must file a Notice of Appeal from the Order and Judgment. *See Weitzner v. Cynosure, Inc.*, 802 F.3d 307, 309 (2d Cir. 2015); *Transportes Navieros y Terrestres S.A. de C.V. v. Fairmount Heavy Transport N.V.*, 572 F.3d 96, 99 (2d Cir. 2009); *Jones v. UNUM Life Ins. Co. of America*, 223 F.3d 130, 137 (2d

Cir. 2000); *Harborside Refrigerated Services, Inc. v. Vogel*, 959 F.2d 368, 372 (2d Cir. 1992). Plaintiff thus understands that this Notice of Appeal might not become effective unless, in ruling on Plaintiff's pending Motion for Reconsideration (ECF 38), the Court does not alter the underlying Order and Judgment which is the subject of the Motion for Reconsideration. *See Safeco Ins. Co. of America v. M.E.S., Inc.*, 2010 WL 5464894, No. 09-CV-3312(AAR)(ALC), *3 (E.D.N.Y. 2010).

Dated: January 13, 2020

HARRIS BEACH PLLC

By: /s/ Karl J. Sleight

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TO: Attorneys of Record (by ECF)